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**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,)	
)	
Appellant-Plaintiff,)	
)	
vs.)	No. 49A02-0607-CR-599
)	
MARILEE STEVENSON,)	
)	
Appellee-Defendant.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David Shaheed, Judge
Cause No. 49G14-0502-FD-20255

May 10, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

In this appeal, the State contends, and Marilee Stevenson (“Stevenson”) agrees, that the trial court improperly granted Stevenson’s motion for discharge for the State’s failure to prosecute her within one year under Criminal Rule 4(C). Concluding that the State and Stevenson are correct, we reverse and remand for trial.

Facts and Procedural History

On May 13, 2004, the State charged Stevenson with Class A misdemeanor possession of marijuana. Stevenson was arrested and appeared in court on May 25, 2004. The trial court scheduled a pre-trial conference for June 28th. However, on June 28, 2004, Stevenson opted out of community court, and the case was transferred to Superior Court Seven. Superior Court Seven held a pre-trial conference on July 29, 2004, at which time it scheduled the trial for September 21, 2004. On September 17, 2004, Stevenson filed a motion for continuance, and the trial court rescheduled the trial for December 6, 2004. On December 6, 2004, the State moved to dismiss the charges, which the trial court granted.

The State refiled charges against Stevenson on February 8, 2005, in Marion Superior Court Fourteen. Stevenson appeared before the court for an initial hearing on February 14, 2005. The trial court held a pre-trial conference on March 17, 2005, scheduling Stevenson’s trial for April 28th.

On March 29, 2005, Stevenson filed a motion to suppress and a motion to dismiss the refiled charges. The trial court scheduled an evidentiary hearing for April 28th, which was later rescheduled for July 7, 2005. However, on that date, Stevenson filed a motion for emergency continuance. The trial court then rescheduled the hearing for

August 11, 2005. Again on August 11th, Stevenson requested a continuance. The trial court rescheduled the hearing for September 15, 2005. On September 15, 2005, Stevenson once again requested a continuance, which the trial court granted, rescheduling the hearing for November 10, 2005.

The trial court conducted the evidentiary hearing on November 10, 2005, and denied Stevenson's motions to suppress and to dismiss the charges. The trial court scheduled the trial for December 8, 2005. However, the trial court later vacated this date and rescheduled the trial for January 19, 2006. The chronological case summary indicates that on January 19, 2006, Stevenson appeared in court and requested another continuance.¹ Stevenson filed a motion for discharge on January 25, 2006, which the trial court granted on March 23, 2006.

The State filed a motion to correct error on April 21, 2006. The trial court conducted a hearing on the motion, which it subsequently denied on June 22, 2006. The State now appeals. Additional facts will be provided as necessary.

Discussion and Decision

The right to a speedy trial is guaranteed by the Sixth Amendment to the United States Constitution and by Article I, Section 12 of the Indiana Constitution. Clark v. State, 659 N.E.2d 548, 551 (Ind. 1995). The provisions of Criminal Rule 4 help implement this right by establishing time deadlines by which trials must be held. See id.

¹ There is some confusion about whether Stevenson or the State requested this continuance. The State's Motion to Correct Error states that "on January 16, 2006, the State moved to continue the trial date. The defendant objected to a new trial setting pursuant to Criminal Rule 4 and subsequently filed a Motion to Dismiss Pursuant to Criminal Rule 4." Appellant's App. p. 46. However, we note that this issue is not dispositive to the outcome of the case because even if the State had requested the continuance, it still would have prosecuted Stevenson within the time limitation provided for under Criminal Rule 4(C).

at 550. However, if a defendant acquiesces in a delay that results in a later trial date, the time limitations are extended by the length of such delays. Vermillion v. State, 719 N.E.2d 1201, 1204 (Ind. 1999).

Criminal Rule 4(C) provides in relevant part:

Defendant Discharged. No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act[.]

Ind. Crim. Rule 4(C) (2007).

Thus, the rule places an affirmative duty on the State to bring a defendant to trial within one year of being charged or arrested, but allows for extensions of that time for various reasons. Ritchison v. State, 708 N.E.2d 604, 606 (Ind. Ct. App. 1999), trans. denied. For instance, “[i]f a delay is caused by the defendant’s own motion or action, the one-year time limit is extended accordingly.” Frisbie v. State, 687 N.E.2d 1215, 1217 (Ind. Ct. App. 1997), trans. denied (citation omitted). We review a trial court’s ruling on a Rule 4 motion for discharge for an abuse of discretion. Smith v. State, 802 N.E.2d 948, 951 (Ind. Ct. App. 2004).

The one-year period begins with the date criminal charges are filed against the defendant or with the arrest of defendant, whichever is later. Sweeney v. State, 704 N.E.2d 86, 100 (Ind. 1998). Stevenson was initially charged on May 13, 2004, and arrested on May 25, 2004. The last rescheduled date of her trial was to take place on February 2, 2006. Hence, there were 618 days between the date when Stevenson was arrested and the date her trial was supposed to take place. Criminal Rule 4(C) provides

that the State must bring a defendant to trial within a year, or 365 days. However, Stevenson caused much of this delay.

First, on June 28, 2004, Stevenson moved to opt out of community court, and the case was subsequently transferred to another court, which held a pre-trial conference on July 29, 2004. This delay is attributable to Stevenson, and therefore the trial court properly concluded that this delay extended the one-year time limit by thirty-one days. Stevenson's trial date of September 21, 2004, was rescheduled upon Stevenson's request for a continuance to December 6, 2004. Therefore, this delay extended the one-year time limit by an additional seventy-six days.

On December 6, 2004, the State dismissed the charges, which were subsequently refiled in February of 2005. "Dismissing and refiling charges does not reset the speedy trial clock—it merely tolls it for the actual days between dismissal and refiling." Sweeney, 704 N.E.2d at 101 (citing Hornaday v. State, 639 N.E.2d 303, 307 (Ind. Ct. App. 1994)). However, the speedy trial time does not re-commence on the date charges are refiled, but instead on the date the defendant is arrested on such charges. Id. This is because Criminal Rule 4(C) sets forth that the speedy trial clock commences "from the date the criminal charge against [] defendant is filed, or from the date of his arrest on such charge, whichever is later." See Crawford v. State, 669 N.E.2d 141, 145 (Ind. 1996). Stevenson was arrested again on February 14, 2005. Therefore, we agree with the State and Stevenson that the seventy days between when the charges were dismissed and Stevenson was arrested extended the one-year time limit by an additional seventy days.

At the pre-trial conference, the court set Stevenson's trial date for April 28, 2005. Before her trial could take place, on March 29, 2005, Stevenson filed a motion to suppress and a motion to dismiss the refiled charges. On April 6, 2005, the trial court set an evidentiary hearing for these motions for April 28, 2005, the date Stevenson's trial was supposed to take place. Subsequently, for reasons unknown the trial court vacated the April hearing and rescheduled the hearing for July 7, 2005. Stevenson then filed a series of motions requesting continuances for the July 7, August 11, and September 15, 2005 evidentiary hearings. The trial court granted all of her motions, and rescheduled the evidentiary hearing for November 10, 2005.

The delay attributable to defendant's filing of a motion to suppress begins on the date when the trial court sets the hearing date for the motion and resets the trial date. Stacy v. State, 752 N.E.2d 220, 223 (Ind. Ct. App. 2001), trans. denied. Here, on April 28th, the trial court set the date for an evidentiary hearing, which necessarily delayed Stevenson's trial. Stevenson subsequently filed a series of motions for continuance, further delaying her trial. Whenever a defendant seeks or acquiesces in a delay that results in a later trial date, the time limitation set by Criminal Rule 4 is extended by the length of such delays. Vermillion, 719 N.E.2d at 1204. Stevenson's repeated motions for continuance demonstrate her acquiescence in the delay of her trial. Therefore, the time from April 28, 2005, when the trial court set a date for the evidentiary hearing, until the November 10, 2005 evidentiary hearing extends the one-year time limitation by an additional 196 days.

When we tally up the extensions of time due to delays caused by Stevenson, we find that the one-year time limitation should have been extended by 373 days. Therefore, the State had at least 738 days in which to bring Stevenson to trial. As stated above, the time period between May 25, 2004, when Stevenson was initially arrested and February 2, 2006, when the trial court scheduled Stevenson's trial, was 618 days. We therefore agree with the State and Stevenson that the trial court abused its discretion in discharging Stevenson under Criminal Rule 4(C). We reverse and remand this cause for trial.

Reversed and remanded for proceedings consistent with this opinion.

NAJAM, J., and MAY, J., concur.